FIRST DIVISION
DATE: November 12, 2013

No. 1-12-1852

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER MARTUCCI, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 12 MC 3325 Honorable Samuel J. Betar, III, Judge Presiding.

JUSTICE Hoffman delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction for disorderly conduct affirmed over his contention that the evidence was insufficient to show that he breached the peace.

¶ 2 Following a bench trial, defendant Christopher Martucci was convicted of disorderly conduct and sentenced to 14 days in jail. On appeal, defendant contends that there was insufficient evidence to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, the victim, Ariel Cudia, testified that he lived in an apartment at 1207 South Old Wilke Road in Arlington Heights. Cudia, defendant, defendant's wife, and his friend Mariusz

Owczarczak all lived in the same apartment complex. On January 28, 2012, defendant's wife struck Cudia with jumper cables. As a result of the incident, Cudia required two staples on his head and suffered a concussion. Cudia signed a complaint against defendant's wife, and the case was pending at the time of the present trial.

¶ 4 Cudia further testified that at about 8:30 p.m. on January 29, 2012, he was waiting for Owczarczak in front of the building adjacent to his residence in the same apartment complex. Defendant approached Cudia and stated, "oh, let me see your little boo-boos." Cudia understood defendant's statement to mean that he wanted to see his cuts, and Cudia responded by pointing at his injuries and stating, "these are little boo-boos?" Defendant stated that the injuries "are nothing," called Cudia a "pussy" because defendant's wife beat him up, and then stated, "I'm going to kick your ass, and you're going to get yours sooner or later." During the encounter, defendant was irate, pointing at Cudia, and speaking so loudly that he was "spraying his words." Cudia felt "alarmed" because he was afraid he was going to get hit again. Cudia, however, did not want to hit defendant. When Owczarczak arrived at the scene, defendant stated, "you're a pussy too. I am going to kick your ass too." Defendant then left the scene and Cudia called the police because he felt threatened. When the police officer arrived, Cudia told her that he felt alarmed and disturbed, but when the officer asked him if he was in fear of receiving a battery, Cudia responded negatively. Cudia testified that he was not in fear of being hit by defendant because Cudia was holding a door and could shut it closed. Owczarczak testified similarly to Cudia.

¶ 5 Officer Valerie Andrews testified that she responded to the scene and, upon her arrival, she met with Cudia and Owczarczak. She then went to speak with defendant who was inside of his apartment. Andrews advised defendant of the comments that Cudia claimed that he made,

and defendant responded by stating, "but I didn't touch him, did I." Defendant appeared agitated, his muscles were tensed, and Andrews indicated that conversing with him was difficult.

¶ 6 Following closing argument, the trial court found defendant guilty of disorderly conduct. In doing so, the court stated that vulgar language alone is insufficient to violate the statute of disorderly conduct, but noted that more than simply vulgar language occurred here. The court specifically pointed out that Cudia is a complaining witness against defendant's wife in a battery case, and defendant referred to the alleged battery while making his vulgar statements, using fighting words like "I am going to kick your ass," pointing at Cudia, and threatening him with physical violence. The court also stated that individuals participating in the criminal justice system have the right to feel secure going about their everyday lives while the cases in which they are involved are pending. Furthermore, the court noted that Cudia felt alarmed and threatened, and that although Cudia also admitted to police that he did not feel a battery was imminent, such admission was probative, but not outcome determinative.

¶ 7 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt of disorderly conduct. In particular, defendant maintains that although he yelled at Cudia, he did not breach the peace.

¶ 8 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). We do not retry the defendant, as it is the trier of fact's responsibility to make determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or

improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 9 A person commits disorderly conduct by knowingly doing anything "in such [an] unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." 720 ILCS 5/26-1(a)(1) (West 2012). This court has described disorderly conduct as a "loosely defined" offense subject to a fact-specific inquiry that encompasses a "'wide variety of conduct serving to destroy or menace the public order and tranquility.'" *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30, quoting *In re B.C.*, 176 Ill. 2d 536, 552 (1997).

¶ 10 Here, taking the evidence in the light most favorable to the State as we must, we conclude that the trial court was not unreasonable in finding defendant guilty of disorderly conduct. While Cudia was waiting for Owczarczak in front of the building adjacent to his apartment, defendant approached him and called him a "pussy" for getting beat up by defendant's wife on the previous day. Defendant was irate, pointed his finger at Cudia, and loudly told him that he was going to "kick [his] ass" sooner or later. During the encounter, Cudia specifically testified that he was "alarmed" by defendant's behavior. When Owczarczak arrived, defendant told him that he was a "pussy" and that he would "kick his ass" as well. After defendant left the scene, Cudia called the police because he felt threatened. When Officer Andrews confronted defendant about the incident, defendant responded by stating, "but I didn't touch him, did I." During the encounter with police, defendant appeared agitated and his muscles were tensed. Based on this evidence, defendant's conduct was unreasonable, disturbed and alarmed Cudia, and provoked a breach of the peace. As the trial court concluded in its findings, it was particularly probative that defendant's threats stemmed from a complaint Cudia filed against defendant's wife. To the extent defendant claims his statements to Cudia regarding the prior incident were mocking in nature and

disconnected from his threat to "kick [his] ass," we observe that the court found otherwise, and we see no reason to disturb that finding.

¶ 11 In so finding, we note that *People v. Davis*, 82 Ill. 2d 534 (1980), is instructive to the case at bar. In *Davis*, the defendant went to the home of an elderly woman who had previously sworn out a complaint against the defendant's brother. The defendant stated that his brother was not going to jail and that, "[i]f he do, Miss Pearl, you know me," while waving sheets of paper. *Davis*, 82 Ill. 2d at 536. The elderly woman's granddaughter-in-law was also present at the scene. The court found that the defendant breached the peace by "unreasonably invading their right not to be harassed." *Davis*, 82 Ill. 2d at 538. Here, defendant threatened Cudia in front of his friend by screaming loudly that he would "kick [his] ass," and referenced defendant's injury that was the subject of the complaint Cudia had pending against defendant's wife. We thus find, similarly to *Davis*, that defendant breached the peace by unreasonably invading Cudia's right not to be harassed. The fact that the woman in *Davis* was elderly and Cudia was about 40 at the time and thus mobile enough to escape does not make the case at bar distinguishable from *Davis* as suggested by defendant.

¶ 12 In reaching this conclusion, we find *People v. Bradshaw*, 116 Ill. App. 3d 421 (1983), *People v. Justus*, 57 Ill. App. 3d 164 (1978), and *People v. Gentry*, 48 Ill. App. 3d 900 (1977), relied on by defendant, distinguishable from the case at bar. Unlike this case, none of the above cases involved evidence showing that the defendants had threatened the victims. Instead, the defendants only used abusive language. See *Bradshaw*, 116 Ill. App. 3d at 422; *Justus*, 57 Ill. App. 3d at 167; and *Gentry*, 48 Ill. App. 3d at 905-06. More importantly, these cases did not involve a complaining witness in a pending case against a member of the defendant's family.

¶ 13 In addition, we note that *People v. Trester*, 96 Ill. App. 3d 553 (1981), relied on by defendant, is also distinguishable. In *Trester*, the defendant swore at a police officer in a court

building and challenged him to a fight. The court found that the defendant's conduct did not constitute a breach of the peace because his remarks about fighting were not immediate, but instead were couched in terms of what might happen. *Trester*, 96 Ill. App. 3d at 556. In his brief, defendant maintains that, similarly to *Trester*, his threat was not immediate. In support, defendant points to Cudia's testimony that he did not wish to retaliate against defendant, and told police he did not feel he was going to receive a battery from defendant. However, the supreme court's decision in *Davis* was not addressed by the court in *Trester*, casting doubt on whether an immediate threat is required to constitute a breach of the peace. See *Davis*, 82 Ill. 2d at 537-38 (finding a breach of the peace where the defendant's threat was undefined and indirect); see also *People v. D.W.*, 150 Ill. App. 3d 729, 732 (1986) (finding a breach of the peace, even when threat was not immediate, where a minor threatened his schoolmate to pay $5 by lunch or he would "kick [his] butt"). In light of *Davis* and *D.W.*, we do not find *Trester* controlling here.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.